REMARKS

This paper is responsive to the Final Rejection dated June 12, 2008. Applicants acknowledge that the Examiner has indicated that claims 77 and 78 are allowable and that claims 58-76 and 79-83 are rejected. Upon entry of this amendment, Claims 58-60 and 62-83 will be pending in the present application. With this amendment, previously pending claim 61 has been canceled and its feature as been incorporated into claim 58. This amendment does not raise any new issues or new matter because the feature of claim 61 has been incorporated into claim 58 to more clearly define the present invention. In addition to claims 58, claims 62, 63, 65, 68, 69, 75, and 82 have been amended to correct minor typographical and dependency issues in the claims. Claims 1-57 were previously canceled. Applicants expressly reserve the right to pursue any canceled subject matter in one or more related, continuation, divisional or continuation-in-part application(s), and such subject matter is canceled without prejudice or disclaimer.

Applicants' invention is directed to optical labeling molecules that contain a zwitterionic dye moiety possessing additional positive or negative charge moieties which are added to a dye moiety to obtain a useful zwitterionic dye moiety with enhanced properties for increased aqueous solubility over a wide pH range and enhanced detection sensitivity (page 7, lines 35-37). The non-titratable zwitterionic dyes of the invention are useful as labeling molecules with increased detection sensitivity, increased solubility and recovery of intact proteins without perturbing the target protein's isoelectric point. Additionally, these molecules are prevented from entering biological membranes or hydrophobic spaces, thereby permitting such molecules to be used for labeling exposed proteins in solution (see specification, page 23, lines 13-16).

Applicants assert that no new matter has been introduced by these amendments. Further, entry of the remarks and amendments submitted herein and reconsideration of the claimed subject matter is respectfully requested.

Response to Objections to the Claims

The Examiner has objected to claims 58, 62, 63, 65, 68, 69, 75, 79, and 82 for misspelling of "quaternary," and claim dependency. The word "quarternary" has been corrected in the claims containing this term and the dependency of claims 65 and 68 have been corrected. With regard to claims 79 and 82, applicants believe that the format of these claims is correct

and these claims properly reference the optical labeling molecule of claim 58. Therefore these latter claims have not been amended. It is requested that these objections be withdrawn in view of these amendments and comments.

Response to Rejections under 35 U.S.C. §112 (second paragraph)

Claim 58 was rejected under 35 U.S.C. 112 (second paragraph) as being indefinite for failing to particularly point out and distinctly claim the language "pK of the group." This language is explained in the specification on page 6, line 27 to page 7, line 3 and page 16, line 33 to page 17, line 13, in which it is disclosed that the "group" is the chemical group or moiety, such as an amino group or a thiol group, on a target protein, which is removed from the target analyte or molecule during the reaction in which the linker moiety attaches to the target analyte. Also see page 14, lines 18-26 which further explains the definition of the "group." Applicants submit that the claims are read in light of the specification and claim 58 defines that the "group" is on the analyte and is removed from the analyte when the analyte is reacted with the linker. Thus, Applicants request that this rejection be withdrawn in view of these comments.

Response to Rejections under 35 U.S.C. § 103

Establishing *prima facie* obviousness requires a showing that the prior art references, when combined, teach or suggest all the claim limitations. Furthermore, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).
Recently, the United States Supreme Court also expressed the need to an "explicit" showing of "some apparent reason to combine the known elements in the fashion claimed by the patent at issue" and that "rejection on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, slip op. at 14 (2007).

1. Haugland *et al.* (US 6,972,326, "the '326 patent") in view of Masters (US 5,362,422, "Masters")

Claims 58-76 and 79-83 are rejected under 35 U.S.C. §103 as obvious over Haugland *et al.* (US 6,972,326; "the '326 patent" or "Haugland") in view of Masters (US 5,362,422, "Masters").

The Examiner alleges that Haugland discloses an optical labeling molecule comprising a zwitterionic dye moiety, a titratable group moiety, a functional linker moiety, a cleavable moiety, isotope labels, amine-reactive linkers, thiol-reactive linkers, other linkers and various structural formulas Further, the Examiner alleges that Haugland discloses labeling molecule having the general structure T-ZA-A and ZD-T-A but does not specifically disclose ZD-C-A, T-ZD-C-I-A and ZD-T-C-I-A. With regard to these latter structures, the Examiner alleges that BODIPY dyes are disclosed in Table 1 of Haugland. While Haugland does disclose applications for the disclosed molecules, it does not recite that that "the dipyrromethene boron difluoride dyes are capable of having different structural configurations to make them compatible with the component to be detected or analyzed" as alleged by the Examiner. See Haugland, col. 18, ll. 9-21. The Examiner then erroneously concludes that it would be obvious to a skilled person to modify Haugland's optical labeling molecule to have a general structure as claimed by Applicants, because it would be desirable to have a labeling dye which is capable of labeling any particular component to be detected or analyzed. Applicants submit that Haugland, particularly in the section cited by the Examiner, discloses that the molecules that are disclosed have a wide range of applications in many scientific disciplines. There is no suggestion in Haugland that the disclosed molecules need to be modified to expand the recited use. In fact, the disclosed use in Haugland is quite broad.

Then the Examiner admits that Haugland does not specifically disclose having a quaternary ammonium group or a sulfonate group that is not titratable between pH 3-12, and then reaches to Masters' disclosure of detergents that are characterized as zwitterionic compounds containing preferably an ammonium group and a sulfonate group to maintain their zwitterionic character over "most of the pH range."

The Examiner concludes that it would have been obvious to a person skilled in the art to modify Haugland's cationic and anionic groups that maintain their amphoteric character over a wide pH range.

Applicants respectfully disagree with the Examiner's conclusion because the Examiner has used impermissible hindsight reconstruction based on Applicants' own disclosure to combine the prior art to arrive at this clearly erroneous conclusion of obviousness and Applicants hereby traverse the rejections as follows.

First, the cited references, namely, Haugland and Masters, solely or in combination, do not disclose or suggest all the claim limitations of the present invention. More specifically, the cited references fail to disclose an optical labeling molecule comprising, *inter alia*, a zwitterionic dye moiety; a functional linker moiety; and a titratable group moiety which is tertiary amine, as claimed in the present invention.

Haugland et al. disclose a method for labeling immobilized proteins with BODIPY type of dyes. It is important to note that none of the Haugland dyes contain a zwitterionic dye moiety (as defined by the International Union of Pure and Applied Chemistry, i.e., IUPAC) or a titratable tertiary amine group. Specifically, according to the definition provided by International Union of Pure and Applied Chemistry (IUPAC) – the international arbiter and decider of chemical nomenclature, "zwitterionic compounds / zwitterions" denotes a neutral compound having electrical charges of opposite sign, particularly not on adjacent atoms. Zwitterionic compounds have no uncharged canonical representations. For example: $H_3N^+CH_2C(=O)O^-$, glycine. See attached Exhibit A. Thus, the BODIPY dyes of Haugland are not zwitterionic compounds. Masters is directed to liquid detergents for cleaning hard surfaces. Masters' detergents contain various surfactants and other additives for cleaning purposes including zwitterionic surfactants. However, the Masters detergents do not contain a zwitterionic dye moiety or a titratable tertiary amine group.

As discussed in the specification (page 14, lines 18 to 29), the titratable group moiety can replace the charge of the target molecule lost during the labeling process and maintain the isoelectric points of the labeled target molecule. Since the isoelectric points of a target molecule, such as, a protein, substantially affect its separation on two-dimensional gels, and can substantially affect its solubility, it is advantageous to have the titratable group moiety in the labeling molecule.

Thus, even if, *arguendo*, the disclosures of Haugland et al. and Masters can be combined together, the combined disclosure still fails to disclose or suggest one important element of the claimed invention, i.e., a zwitterionic dye moiety and a titratable group moiety which is tertiary amine.

Furthermore, the obviousness rejection also fails because there is no disclosure or suggestion available in the cited references, or otherwise of record, to motivate one skilled in the art to apply zwitterionic groups of a surfactant to an optical labeling molecule, let alone to further modify the optical labeling molecule by adding titratable group moiety to maintain the isoelectric points of a target molecule.

In view of the above, Applicants respectfully submit that the combination of Haugland and Masters do not render the claimed invention obvious.

2. Meltola *et al.* (US 7,198,958, " Meltola") in view of Masters (US 5,362,422, "Masters")

Claims 58-61, 64, 67, 68, 70-72 and 79-83 are rejected under 35 U.S.C. §103 as obvious over Meltola *et al.* (US 7,198,958, " Meltola") in view of Masters (US 5,362,422, "Masters").

The Examiner alleges that Meltola discloses an optical labeling molecule (Compound 8 in Fig. 2c) comprising the zwitterionic dye moiety and a functional linker moiety and Compound 43 in Fig. 7 comprising a titratable group moiety. Compound 8 in Fig. 2c does not contain a zwitterionic dye moiety or a titratable group moiety. Applicants cannot locate Compound 43 in Fig. 7 in Meltola and reference to this compound appears to be in error. So in actuality there is no compound in Meltola that contains a zwitterionic dye moiety that is not titratable between pH 3-12 or a titratable group moiety (that is a tertiary amine) and it does not appear that the Examiner is alleging that there is one compound in Meltola that contains the 3 features of the molecule, i.e., (a) a zwitterionic dye moiety; (b) a functional linker moiety, and (c) a titratable group moiety. Then as with the obviousness rejection of Haugland in view of Masters, the Examiner states that Meltola does not specifically disclose having a quaternary ammonium group or a zwitterionic charge pair that is not titratable between pH 3-12, and then relies on Masters' disclosure of detergents that are characterized as zwitterionic compounds containing preferably an ammonium group and a sulfonate group to maintain their zwitterionic character over "most of the pH range."

The Examiner concludes that it would have been obvious to a person skilled in the art to modify Meltola's cationic and anionic groups to be non-titratable between pH 3-12 because it would be desirable to utilize cationic and anionic groups that maintain their amphoteric character over a wide pH range, referencing Master, col. 2, ll. 23-36.

Applicants respectfully disagree with the Examiner's conclusion because the Examiner has again used hindsight reconstruction based on Applicants' own disclosure to combine the prior art to arrive at this clearly erroneously conclusion of obviousness and Applicants hereby traverse the rejections as follows.

First, the cited references, namely, Meltola and Masters, solely or in combination, do not disclose or suggest all the claim limitations of the present invention. More specifically, the cited references fail to disclose an optical labeling molecule comprising, *inter alia*, a zwitterionic dye moiety; a functional linker moiety; and a titratable group moiety which is tertiary amine, as claimed in the present invention.

Meltola et al. disclose methods to increase hydrophilicity of otherwise hydrophobic fluorophores by introducing highly hydrophilic linker compounds (column 6, lines 35 to 37). Specifically, Meltola introduces a water-solubilizing moiety, i.e., Y, to a fluorescent label compound to increase the water solubility of the compound. However, none of the Meltola dyes contain a combination of zwitterionic charge pairs, non-titratable between pH 3-12 or a titratable tertiary amine group. Specifically, unlike the zwitterionic dye moieties of the present invention, the Meltola dyes either are not zwitterionic at all because they are merely organic salts, or have zwitterionic moieties that are titratable between pH 3-12. As discussed before, Masters is directed to liquid detergents for cleaning hard surface and the Masters detergents do not contain a zwitterionic fluorescent dye moiety or a titratable tertiary amine group.

Citing Figure 7, compound 43, the Examiner alleges that Meltola disclose a titratable tertiary amine group. Applicants respectfully point out that there is no Figure 7 or compound 43 in Meltola, the disclosure of which includes only Figures 1, 2a, 2b, 2c, 2d, 2e, and 3, and compounds 1 to 17.

Thus, even if, *arguendo*, the disclosures of Meltola and Masters can be combined together, the combined disclosure still fails to disclose or suggest one important element of the claimed invention, i.e., a titratable group moiety which is tertiary amine.

Furthermore, the obviousness rejection also fails because there is no disclosure or suggestion available in the cited references, or otherwise of record, to motivate one skilled in the art to apply zwitterionic groups of a surfactant to an optical labeling molecule, let alone to further modify the optical labeling molecule by adding titratable group moiety to maintain the isoelectric points of a target molecule.

The Examiner then specifically refers to disclosures in Meltola which allegedly disclose the features of Claims 59-61, 64, 70, 71, 72, and 79-83 but these claims are dependent claims from claim 58, and Applicants submit that the optical labeling molecule of claim 58 is not obvious over Meltola in view of Masters, and therefore, these dependent claims are not obvious. The Examiner's reason to combine these prior art is not suggested by either of these prior art or has the Examiner explained how the desirable effect of the amphoteric character over a wide pH range would be a feature one skilled in the art would strive for based upon the use of zwitterions in liquid detergents.

In view of the above, Applicants respectfully submit that the combination of Meltola and Masters do not render the claimed invention obvious.

3. Meltola *et al.* (US 7,198,958, " Meltola") in view of Masters (US 5,362,422, "Masters") in view of Loehrlein *et al.* (US Pub. No. 2002/0160361, "Loehrlein")

Claims 66, 73 and 74 are rejected under 35 U.S.C. §103 as obvious over Meltola *et al.* (US 7,198,958, " Meltola") in view of Masters (US 5,362,422, "Masters"), as applied to Claims 58-61, 64, 67, 68, 70-72 and 79-83, and further in view of Loehrlein *et al.* (US Pub. No. 2002/0160361, "Loehrlein") because neither of Meltola or Masters disclose a second label comprising a light stable isotope or heavy stable isotope. Loehrlein discloses radioisotopes or stable higher mass isotopes for measuring the amplification of cDNA with primers and the polymerase chain reaction. The Examiner alleges that it would have been obvious to a person skilled in the art to modify the molecules of Meltola by including the heavy stable isotope of Loehrlein for detection between two different DNA PCR amplification products with otherwise similar or equal masses for detection of differences in the amounts of proteins as disclosed by the applicant.

Loehrlein does not cure the defects of the combined disclosures of Meltola and Masters because Loehrlein merely discloses the use of atomic isotopes, such as, radioactive or stable isotopes, in gene expression analysis. Inasmuch as Meltola and Masters fail to teach or suggest the claimed limitations of the present invention, Loehrlein is further removed as is evidenced by including this reference in rejecting aspects of Applicants' dependent claims.

As argued above, the combination of Meltola and Masters fail to render the claimed optical labeling molecule obvious, and the addition of isotopic labels of Loehrlein does not cure any of the deficiencies of the two primary references. Therefore, it is requested that this

rejection withdrawn because the present invention is not rendered obvious by Meltola in view of Masters and Loehrlein

4. Benson *et al.* (US 6,051,719, "'Benson") in view of Masters (US 5,362,422, "Masters")

Claims 58-60, 62-64, 67-69, 75, 79, 80, 82 and 83 are rejected under 35 U.S.C. §103 as obvious over Benson *et al.* (US 6,051,719, " Benson") in view of Masters (US 5,362,422, "Masters").

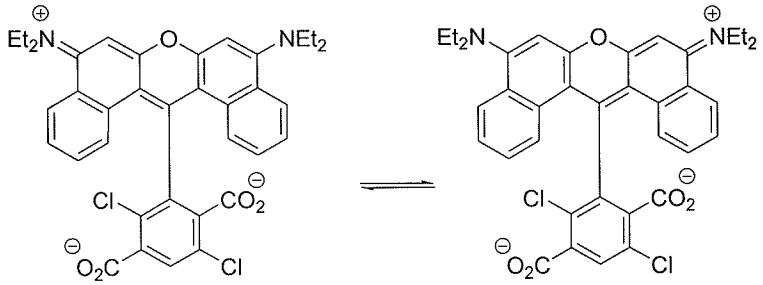
The Examiner alleges that Benson discloses an optical labeling molecule (Compound 43 in Fig. 7) comprising the zwitterionic dye moiety, a functional linker moiety and a titratable group moiety. The examiner is in error concerning compound 43 in Benson which is not a zwitterionic dye moiety (net charge of -3 at high pH and -1 at low pH), and does not contain a functional linker or a titratable group moiety that has the properties required by the claims. Then as with the obviousness rejections of Haugland or Meltola in view of Masters, the Examiner states that Benson does not specifically disclose having a quaternary ammonium group or a sulfonate group that is not titratable between pH 3-12, and then relies on Masters' disclosure of detergents that are characterized as zwitterionic compounds containing preferably an ammonium group and a sulfonate group to maintain their zwitterionic character over "most of the pH range."

The Examiner concludes that it would have been obvious to a person skilled in the art to modify Benson's cationic and anionic groups to be non-titratable between pH 3-12 because it would be desirable to utilize cationic and anionic groups that maintain their amphoteric character over a wide pH range, referencing Master, col. 2, ll. 23-36.

Applicants respectfully disagree with the Examiner's conclusion because the Examiner has once more used hindsight reconstruction based on Applicants' own disclosure to combine the prior art to arrive at this clearly erroneously conclusion of obviousness Applicants hereby traverse the rejections as follows.

First, the cited references, namely, Benson and Masters, solely or in combination, do not disclose or suggest all the claim limitations of the present invention. More specifically, the cited references fail to disclose an optical labeling molecule comprising, *inter alia*, a zwitterionic dye moiety; a functional linker moiety; and a titratable group moiety which is a tertiary amine closely approximating the pK of the group removed from the analyte by reaction with the functional linker, as claimed in the present invention.

Benson discloses certain dibenzorhodamine dye compounds useful for fluorescent detection. Furthermore, the Examiner alleges that Benson discloses tertiary amine as titratable group moiety in the labeling molecule. Applicants respectfully note that the tertiary amine of Benson cannot be the claimed titratable group moiety in the present invention. Specifically, as shown in the example below, the tertiary amine of Benson has a resonant structure of quaternary ammonium because the nitrogen atom of the tertiary amine is directly attached to a conjugated aromatic ring system. Therefore, the Benson tertiary amines do not approximate the pK of the group removed from the analyte by reaction with the functional linker, as claimed in the present invention. Moreover, none of the Benson dyes contain a combination of zwitterionic charge pairs as claimed in the present invention. Specifically, the Benson dyes either are not zwitterionic at all because they are not net neutral, or have zwitterionic moieties that are titratable between pH 3-12. As discussed above, Masters is directed to liquid detergents for cleaning hard surface and the Masters' detergents do not contain a titratable tertiary amine group.



Compound **41** of Benson et al. Resonant Structure of Compound **41**

Thus, even if, *arguendo*, the disclosures of Benson and Masters can be combined together, the combined disclosure still fails to disclose or suggest one important element of the claimed invention, i.e., a titratable group moiety which is tertiary amine.

Furthermore, the obviousness rejection also fails because there is no disclosure or suggestion available in the cited references, or otherwise of the record, to motivate one skilled in the art to apply zwitterionic groups of a surfactant to an optical labeling molecule, let alone to further modify the optical labeling molecule by adding titratable group moieties to maintain the isoelectric points of a target molecule.

In view of the above, Applicants respectfully submit that the cited references do not render the claimed invention obvious.

The Examiner then specifically refers to disclosures in Benson which allegedly disclose the features of Claims 59, 60, 62-64, 69, 75, 79, 80, 82, and 83 but these claims are

dependent claims from claim 58, and Applicants submit that the optical labeling molecule of claim 58 is not obvious over Benson in view of Masters, and therefore, these dependent claims are not obvious. The Examiner 's reason to combine these prior art is not suggested by either of these prior art nor has the Examiner explained how the desirable effect of the amphoteric character over a wide pH range would be a feature one skilled in the art would strive for based upon the use of zwitterions in liquid detergents.

For all of these reasons, Applicants further submit that the rejected claims are not rendered obvious over Benson in view of Masters, and it is requested that the rejection be withdrawn.

5. Benson *et al.* (US 6,051,719, "Benson") in view of Masters (US 5,362,422, "Masters") and further in view of Meade *et al.* (US 6,713045, "Meade")

Claims 65 and 76 are rejected under 35 U.S.C. §103 as obvious over Benson *et al.* (US 6,051,719, " Benson") in view of Masters (US 5,362,422, "Masters"), as applied to claims 58-60, 62-64, 67-69, 75, 79, 80, 82 and 83 above, and further in view of Meade *et al.* (US 6,713045, "Meade").

The Examiner alleges that Benson and Masters are applied as above and admits that neither of these references disclose having a photocleavable moiety that is selected from a group consisting of a O-nitrobenzylic or benzoin moiety. However the Examiner alleges that Meade discloses a blocking moiety that is a photocleavable moiety that is useful in developmental biology fields.

The Examiner then concludes that it would have been obvious to a person of ordinary skill in the art to modify the modified optical labeling molecule of Benson by incorporating the benzoin or O-nitrobenzylic compound of Meade which allegedly is known to be useful in biological fields.

Meade is directed to targeted magnetic resonance contrasting/imaging agents. Specifically, the Meade contrasting/imaging agents are based primarily on Gd(III) chelates containing moieties that block access of water to the Gd(III) relaxation center. Inasmuch as Benson in combination with Masters do not disclose or suggest the claimed limitations of the present invention, Meade is further removed as is evidenced by including Meade in rejecting aspects of Applicants' dependent claims.

As argued above, the combination of Benson and Masters fail to render the claimed optical labeling molecule obvious, and the addition of photocleavable moieties of Meade

does not cure any of the deficiencies of the two primary references. Therefore, it is requested that this rejection withdrawn because the present invention is not rendered obvious by Benson in view of Masters and Meade.

6. Benson *et al.* (US 6,051,719, "Benson") in view of Masters (US 5,362,422, "Masters") further in view of Loehrlein *et al.* (US Pub. No. 2002/0160361, "Loehrlein")

Claims 66, 73 and 74 are rejected under 35 U.S.C. §103 as obvious over Benson *et al.* (US 6,051,719, " Benson") in view of Masters (US 5,362,422, "Masters"), as applied to claims 58-60, 62-64, 67-69, 75, 79, 80, 82 and 83 above, and further in view of Loehrlein *et al.* (US Pub. No. 2002/0160361, "Loehrlein") because neither of Benson or Masters disclose a second label comprising a light stable isotope or heavy stable isotope. Loehrlein discloses radioisotopes or stable higher mass isotopes. The Examiner alleges that it would have been obvious to a person skilled in the art to modify the molecules of Benson by including the heavy stable isotope of Loehrlein for detection between two different amplification products with otherwise similar or equal masses.

Loehrlein et al. do not cure the defects of the combined disclosures of Benson et al. and Masters because Loehrlein et al. merely disclose the use of atomic isotopes, such as, radioactive or stable isotopes, in gene expression analysis. Inasmuch as Benson et al. and Masters fail to teach or suggest the claimed limitations of the present invention, Loehrlein et al. is further removed as is evidenced by including the reference in rejecting aspects of Applicants' dependent claims. Thus, the present invention is not rendered obvious by Benson et al. in view of Masters and Loehrlein et al.

As argued above, the combination of Benson and Masters fail to render the claimed optical labeling molecule obvious, and the addition of isotopic labels of Loehrlein does not cure any of the deficiencies of the two primary references. Therefore, it is requested that this rejection withdrawn.

7. Benson *et al.* (US 6,051,719, "Benson") in view of Masters (US 5,362,422, "Masters") further in view of Loehrlein *et al.* (US Pub. No. 2002/0160361, "Loehrlein") and further in view of Meade *et al.* (US 6,713045, "Meade")

Claims 76 is rejected under 35 U.S.C. §103 as obvious over Benson *et al.* (US 6,051,719, " Benson") in view of Masters (US 5,362,422, "Masters"), as applied to claims 58-60, 62-64, 67-69, 75, 79, 80, 82 and 83 above, and further in view of Loehrlein *et al.* (US Pub. No. 2002/0160361, "Loehrlein") as applied to claims 66, 73 and 74 above, and further in view of Meade because none of Benson, Masters or Loehrlein disclose having a photocleavable moiety that is selected from a group consisting of a O-nitrobenzylic or benzoin moiety. The Examiner alleges that it would have been obvious to a person skilled in the art to modify the molecules of Benson by incorporating the benzoin or O-nitrobenzylic compound of Meade which allegedly is known to be useful in biological fields. including the heavy stable isotope of Loehrlein for detection between two different amplification products with otherwise similar or equal masses.

Loehrlein and Meade do not cure the defects of the combined disclosures of Benson and Masters because Loehrlein et al. merely disclose the use of atomic isotopes, such as, radioactive or stable isotopes, in gene expression analysis, while Meade is directed to targeted magnetic resonance contrasting/imaging agents. Inasmuch as Benson and Masters fail to teach or suggest the claimed limitations of the present invention, Loehrlein et al. and Meade are further removed as is evidenced by including the reference in rejecting aspects of Applicants' dependent claims. Thus, the present invention is not rendered obvious by Benson in view of Masters, Loehrlein and Meade.

As argued above, the combination of Benson and Masters fail to render the claimed optical labeling molecule obvious, and the addition of photocleavable moieties of Meade does not cure any of the deficiencies of the two primary references. Therefore, it is requested that this rejection withdrawn.

Conclusion

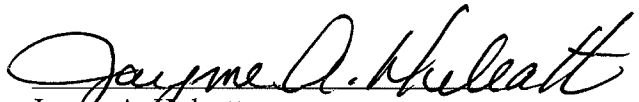
It is respectfully requested that this amendment be entered as it does not raise any new issues or new claim features or require a new search as the feature of now canceled claim 61 has been incorporated into independent claim 58. Therefore, the feature of claim 61 has already been considered and searched by the Examiner.

For the reasons stated above, Applicant respectfully submits that the claims are now in condition for allowance, early notice of which would be appreciated. Should the Examiner disagree, Applicant respectfully requests a telephonic or in-person interview with the undersigned attorney to discuss any remaining issues and to expedite the eventual allowance of the claims.

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-1283. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. 1.136(a)(3).

Dated: December 12, 2008

Respectfully submitted,
COOLEY GODWARD KRONISH LLP

By: 
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